

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALTE JURISDICTION.

CRIMINAL APPEAL NO. 614 OF 1997

Sanjay Ananda Koli
Appellant.
(Orig.Accd.)
V/s

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The State of Maharashtra Respondent.

Mr.Shekhar A. Ingawale, Adv. for the appellant.

Mr.A.S. Shitole, APP for the respondent.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

7th July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned II Additional Sessions Judge, Kolhapur in Sessions Case No.70/97 on 4.10.1997 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned advocate for the appellant and the learned Public Prosecutor for the respondent we have scrutinized

the entire evidence on record and reappreciated the same.

3. The prosecution story stated briefly is that on 29.12.1996 at about 2.00 p.m. the accused assaulted one Rukmini with a gupti as she was responsible for the divorce of one Vanita. The accused left the gupti with which the assault was made at the spot and ran away. On the basis of the complaint lodged by P.W.1-Yashwant Koli police took up the investigation, arrested the accused and charge sheeted him under section 302 of Indian Penal Code for intentionally causing death of Rukmini. The prosecution examined as many as 12 witnesses to prove its case and the learned trial Judge on appreciation of this evidence came to the conclusion of guilt and consistent with that conclusion he sentenced the accused to imprisonment for life. It is this order which is impugned before us in the above appeal.

4. P.W.1-Yashwant Koli is the complainant who gathered the information regarding stabbing of Rukmini by accused and therefore lodged the complaint with the police. He is not an eye witness but had gone to the scene of offence immediately after the incident occurred and gathered information from the people around the victim Rukmini. P.W.2-Suvarna Koli is eye witness to the incident who on 29.12.1996 around 2.00 p.m. was washing clothes at the public water tap. At that time the accused came there and talked to her. Rukmini was

collecting cow dung at a distance of 25 feet. Then accused Sanjay went to the place where Rukmini was sitting and started talking to her. He then assaulted her in the abdomen by means of gupti and ran away leaving gupti at the place. Rukmini shouted witness went near Rukmini when Rukmini told her that the accused ran away after assaulting her. She has specifically stated that she saw the accused assaulting the victim by means of gupti. People gathered around and she told them about the accused assaulting Rukmini and running away. The witness has been cross examined thoroughly and there is nothing in her cross examination which requires rejection of her entire evidence. Shri Ingawale, learned counsel appearing for the appellant-accused has assailed the testimony of this witness and contended that she is not an eye witness, she has no reason to be there at the water tap and therefore is liable to be disbelieved. We are unable to accept this criticism in view of the fact that the witness had come to the public water tap for washing clothes. Merely because she had a bathroom in her house it cannot be said that she had no reason to go to public water tap. Possibility of her bathroom water connection not having water is not negatived by cross examination. In the circumstances merely because there was a bathroom in the house of this witness she cannot be branded as chance witness and therefore liable to be rejected.

5. P.W.3-Shashikant Kamble is panch witness to the recovery of blood stained shirt from the person of the accused. He has proved the panchnama and has identified the shirt in the Court. P.W.4 is Vikram Patil. This witness was near the scene of offence around 2.00 p.m. and saw the accused talking to Rukmini near the Chappar. He then heard some cries and saw the accused running away from their side towards eastern side. He therefore went near the shed, saw P.W.2 with Rukmini who was injured. P.W.2-Suvarna told him that accused Sanjay hit Rukmini by means of gupti and ran away. The witness saw the gupti lying there near Rukmini. He identified the same in the Court. The truthfulness of this witness cannot be questioned. He does not claim to be an eye witness though he was near the spot. He corroborates the testimony of P.W.2-Survarna who claims to be an eye witness. He saw her near the victim, he saw gupti lying on the spot and has therefore deposed about it in the Court. P.W.5-Bhagwan Patil is owner of a cattle shed. P.w.6-Pandurang Koli is husband of deceased. P.W.7-Raju Pohale is the auto rickshaw driver who took the victim to the hospital. P.W.8-Chandrappa Mutnal, P.W.9-Vijay Shirole and P.W.10-Parasu Deolkar are the police head constables who handled the case during the course of investigation. P.W.11-Bharat Patil is another witness who heard the victim saying that she was stabbed by the accused. The fact that he was the person who took the victim to the

hospital after first auto rickshaw broke is not disputed. P.W.12-Dilip Kadam is the investigating officer. It was on appreciation of evidence of these persons that the learned trial Judge came to the conclusion of guilt and convicted the accused as aforesaid. From the evidence above it is obvious that the accused did assault Rukmini the victim. The prosecution has not examined the doctor. The gravity of the injuries and whether they were intended to cause death of the victim therefore is not proved. That they were sufficient to cause death of the victim thereafter is proved. In such circumstances when the blood stained clothes are recovered at the scene, eye witness states about the incident and the eye witness is fully corroborated by the other witnesses who were naturally present near the spot, recovery of gupti from the spot is not disputed and consequently the fact that the accused stabbed the victim could not be disputed or doubted or held not proved.

6. The question therefore arises as submitted by Shri Ingawale is whether even after proof as aforesaid the finding under section 302 of Indian Penal Code could be recorded. According to him, the assault was sudden and not premeditated in the sense the accused did not go with the intention to commit murder. According to defence as also the prosecution the accused was enraged by the role played by the victim in the marriage and divorce of Vanita. He therefore wanted victim to

dissuade from proceeding in the divorce of Vanita. The circumstances attending the assault clearly show that the accused tried to pursue Rukmini and his failure resulted in his stabbing her. There is no evidence to show that he intended to cause death. But the knowledge that by such stabbing causing death has to be acquired in the accused. We are therefore of the view that the contention raised by Shri Ingawale is right. The conviction under section 302 of Indian Penal Code cannot be sustained as a consequence it is set aside. So is set aside the life imprisonment.

7. Taking into consideration the attending circumstances and the manner in which the assault took place, in our opinion, the prosecution has proved beyond reasonable doubt the cause under section 304 Part I of the Indian Penal Code. The appeal therefore partly succeeds and is partly allowed. The order of conviction and sentence under section 302 of IPC is set aside. Instead the appellant-accused is convicted under section 304 Part I of IPC and is sentenced to suffer rigorous imprisonment for 10 years. Appeal accordingly stands disposed of.